

MINUTES
NEVADA STATE BOARD OF OPTOMETRY
REGULAR MEETING

June 6th, 2003
The Mercury Aviation Group
655 South Rock Boulevard
Conference Room
Reno, Nevada

A regular meeting of the Nevada Board of Optometry was called to order by Board President, Kurt G. Alleman, O.D., at 11:00 o'clock A.M. on June 10th, 2003, in the Conference Room at The Mercury Aviation Group, 655 South Rock Boulevard, Reno, Nevada.

Identifying themselves as present were:

Kurt G. Alleman, O.D., Board President
Brad C. Stewart, O.D., Board Member
Jack Sutton, O.D., Board Member
George Bean, Board Member
Judi Kennedy, Executive Director
Tina Leiss, Senior Deputy Attorney General

Also present were:

Jeffrey D. Ferris, O.D.
Hal Taylor, Esq.

Dr. Alleman asked for public comment. There was no public comment.

The minutes of the regular meeting of the Board held on March 7th, 2003, were presented for approval. Mr. Bean stated on Page 3, first full paragraph, after the words "probationary period." there should be added, "Mr. Bean seconded the motion," and "The vote was unanimous." Dr. Sutton moved the minutes be approved as corrected. Dr. Stewart seconded the motion. The vote was unanimous.

The Board moved to Agenda Item 3, the Accusation of Judi Kennedy, as Executive Director, vs. Mario Aguero, O.D. Ms. Kennedy directed the Board's attention to the faxed copy of a proposed Stipulation, which had been signed by counsel for Dr. Aguero. Ms. Leiss stated the Stipulation would vacate the hearing scheduled before the appeals officer on the pending Accusation, and that the Accusation and a pending Complaint would be considered by the Board at its next regular meeting. Dr. Stewart moved the Stipulation be accepted. Dr. Sutton seconded the motion, which carried unanimously.

The Board next considered Agenda Item 4, the Accusation of Judi Kennedy, as Executive Director, vs. Lesa D. Davis, O.D. Ms. Kennedy advised the Board Dr. Davis had obtained the additional license, which was the subject of the complaint and accusation, and had submitted a check in payment of the proposed \$250 fine. Dr. Sutton moved the Accusation be resolved based on payment of the fine. Dr. Stewart seconded the motion. The vote was unanimous.

Agenda Item 5, the Complaint of Robert M. Allen vs. Harvey Ohriner, was next considered by the Board. Dr. Alleman outlined the allegations of the complaint. A discussion ensued, during which the Board determined the standard of care was acceptable, that the prescriptive item was not functional, and that an extensive period of time had elapsed since the occurrence and the filing of the complaint. Dr. Sutton pointed out manufacturers, in general, allow a six month period of time for adaptation for the prescriptive item. Dr. Sutton moved the complaint be dismissed for lack of merit, based primarily on the length of time between the occurrence and the filing of the complaint. Mr. Bean seconded the motion. The vote was unanimous.

The Board moved on to Agenda Item 6, the Complaint of Judi D. Kennedy, as Executive Director, vs. Kevin C. Rowe, O.D.. The Board reviewed the response of Dr. Rowe. Dr. Sutton expressed his appreciation for the willingness to dispose of the complaint expressed by Dr. Rowe in his response. The Board determined the Complaint has merit. Dr. Sutton moved an Accusation be filed, proposing a \$100 fine for disposition. Dr. Stewart seconded the motion. The vote was unanimous.

The Board next considered Agenda Item 7, the Complaint of Judi D. Kennedy, as Executive Director, vs. Van T. Tran, O.D.. The Board determined the Complaint has merit. Dr. Stewart moved an Accusation be filed, proposing a \$100 fine for disposition. Mr. Bean seconded the motion. The vote was unanimous.

The Board turned to Agenda Item 8, the Complaint of Misty Richardson vs. Jeffrey D. Ferris, O.D. Dr. Alleman reminded the members the complaint had been continued from the Board's March 7th, 2003, and Ms. Leiss had been requested, at that time, to review the agreement between Dr. Ferris and Shopko. Dr. Alleman requested Ms. Leiss advise the Board of her determinations as a result of the review of the agreement.

Ms. Leiss stated the agreement is between Shopko Stores, Inc., and Lake Tahoe Eyecare, Inc. Ms. Leiss directed the Board's attention to Paragraph 15 of the agreement, stating Shopko is dealing with the leasee [Lake Tahoe Eyecare, Inc.], as if it were an optometrist licensed in the State of Nevada. Ms. Leiss advised the Board even though the agreement was with Dr. Ferris' corporation, she did not feel that shell provided sufficient insulation from the statutory prohibition of an optometrist accepting employment, directly or indirectly, from a non-optometrist. She further advised the Board the rent of \$1,800 per year is not only minimal, but based on a gross revenue figure. In the event the gross

revenue amount is not realized, the rent is waived. There was discussion about the statutory requirement that rent, in a sublease situation, must be based on fair market value, and whether or not this agreement is in compliance. Dr. Alleman directed the Board's attention to NRS 636.300[2], stating he believed Dr. Ferris, under the terms of the agreement, was indirectly accepting employment from a person not licensed to practice optometry in the State of Nevada. Dr. Ferris stated he had requested the Board review the agreement, and that it had declined. Ms. Kennedy reminded Dr. Ferris it is Board policy to review such agreements, only when a complaint is filed, and that at the time he requested the review, there was no pending complaint. Dr. Ferris went on to state his attorney had reviewed the agreement, and had advised it was compliant with NRS Chapter 636. Dr. Stewart stated he believed the Board should bear in mind, in its consideration of the complaint, that Dr. Ferris had had his attorney review the agreement, and had relied on his attorney's opinion that it was compliant. Ms. Leiss said at some point Shopko is paying Dr. Ferris, that the shell of the corporation does not protect him, and that it appeared to her the complaint has merit. Dr. Ferris raised the issue of what he recalled to have been a complaint filed against another licensee for similar acts, and contended the Board took no action on the complaint. After discussion between Dr. Ferris, the Board members, and Ms. Leiss, Ms. Kennedy was directed to research the Board's records and supply the members and Ms. Leiss with any documentation relating to the prior complaint. Ms. Leiss suggested the Board continue the complaint for further consideration at its next meeting, after the members had had a chance to review any documents relating to the prior complaint. Mr. Bean moved the complaint be continued for further consideration at the Board's next regular meeting. Dr. Sutton seconded the motion. The vote was unanimous.

Under Agenda Item 9, the Board noted AB275 had been approved by the Governor on May 13th, 2003, and that it would become effective on October 1st, 2003.

Ms. Kennedy reported she had learned the National Board of Examiners in Optometry [“NBEO”] had decreased the number of test centers for the August law examination. Applicants could only take the August law examination at the test center in Memphis, Tennessee. She suggested applicants be given the option of taking the law exam, either through the NBEO at its test centers, when offered with Part III, or taking the exam at the Board’s office in Carson City. The Board agreed the option should be given.

Ms. Kennedy advised the Board she had located a facility in Crystal Bay, Nevada, for the August meeting.

Dr. Alleman asked for public comment. There was no public comment.

The Board scheduled a meeting for Friday, August 15th, 2003, in Crystal Bay, Nevada.

The Board scheduled a meeting for Friday, October 10th, 2003, in Las Vegas, Nevada.

Mr. Bean moved the meeting adjourn. Dr. Stewart seconded the motion. The meeting adjourned at 12:05 o’clock P.M.